

3
NO. 91-552

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1991

MICHAEL EUGENE THOMPSON,

PETITIONER,

v.

STATE OF ALABAMA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

RESPONDENT'S BRIEF IN OPPOSITION
TO CERTIORARI

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Supreme Court, U.S.
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DEC 12 1991
OFFICE OF THE CLERK



QUESTIONS PRESENTED FOR REVIEW

1. Should this Court grant certiorari to review petitioner's claim that the limitations placed on the amount of compensation that counsel representing indigent capital murder defendants can receive from the State in Alabama are unconstitutional because they result in the ineffective assistance of counsel when this Court lacks jurisdiction over the issue because that issue was not properly raised in the courts below, the issue is clearly unworthy of certiorari review and is completely without merit?

2. Should this Court grant certiorari to review petitioner's claim that the admission of his coerced confession was unconstitutional when this Court lacks jurisdiction over the issue because no federal question is presented, and when the issue is clearly unworthy of certiorari review and is completely without merit?

PARTIES

The caption contains the names of all parties in the courts, below.

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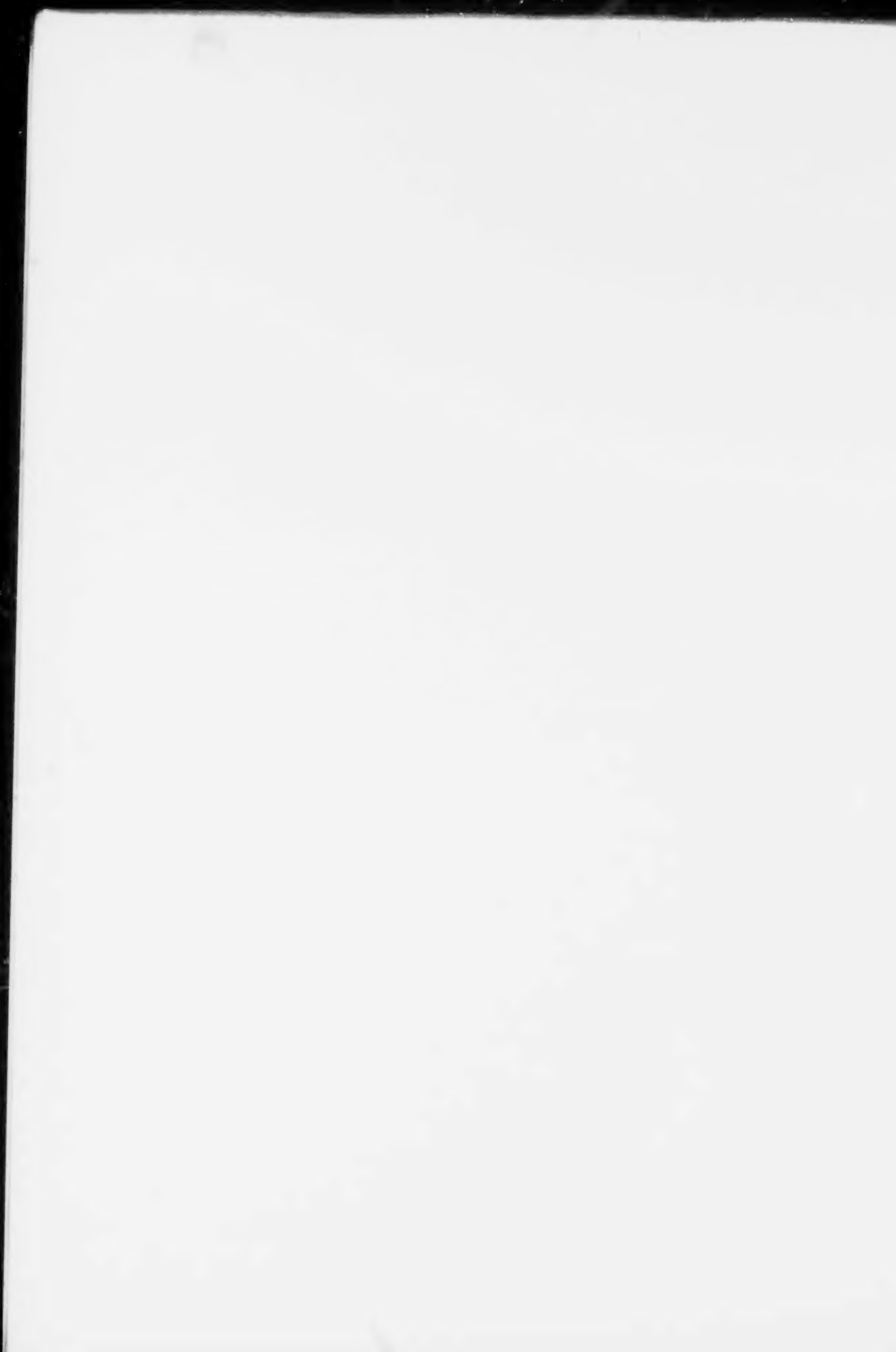
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OPINIONS BELOW

Petitioner Michael Eugene Thompson filed a collateral petition and amended petition for relief from conviction or sentence pursuant to Temporary Rule 20, Alabama Rules of Criminal Procedure, which were denied by the Circuit Court of Blount County, Alabama, on February 15, 1990. The Alabama Court of Criminal Appeals affirmed the denial of relief on January 18, 1991. Thompson v. State, 581 So.2d 1216 (Ala.Cr.App. 1991). (The state collateral trial court's order and memorandum opinion is attached to that opinion as an appendix.) On March 1, 1991, the Alabama Court of Criminal Appeals overruled Thompson's application for rehearing. The Alabama Supreme Court denied Thompson's petition for writ of certiorari to the Alabama Court of Criminal Appeals without opinion on June 21, 1991. Thompson v. State, 581 So.2d

1216 (Ala. 1991). Thompson seeks review of the denial of certiorari by the Alabama Supreme Court.

On direct appeal, the Alabama Court of Criminal Appeals affirmed Thompson's conviction and death sentence. Thompson v. State, 503 So.2d 871 (Ala.Cr.App. 1986). Rehearing was overruled by that court on May 13, 1986. On certiorari in the Alabama Supreme Court, the Alabama Court of Criminal Appeals was affirmed. Ex parte Thompson, 503 So.2d 887 (Ala. 1987). This Court denied Thompson's petition for writ of certiorari to the Alabama Supreme Court. Thompson v. Alabama, 484 U.S. 872 (1987).

JURISDICTION

The decision of the Alabama Supreme Court denying the petition for writ of certiorari was issued on June 21, 1991. Thompson properly filed his petition for

writ of certiorari and brief in support in this Court on October 15, 1991.

This Court does not have jurisdiction over the issues raised because they are not properly before this Court and because argument II does not present a federal question.

CONSTITUTIONAL PROVISIONS AND
STATUTES INVOLVED

The statement of constitutional provisions and statutes involved in this case, which is contained on page ix of the certiorari petition is correct. In addition, this case involves the following:

Alabama Rules of Criminal Procedure
Temporary Rule 20.2(a)¹ provides:

¹Temporary Rule 20.2(a) of the Alabama Rules of Criminal Procedure is now codified as Rule 32.2(a) of the Alabama Rules of Criminal Procedure. The rules are materially identical in all respects.

Rule 20.2. Preclusion of
remedy.

(a) PRECLUSION OF
GROUNDS. A petitioner will
not be given relief under
this rule based upon any
ground:

(1) Which may still
be raised on direct
appeal under the Alabama
Rules of Appellate
Procedure, or by
post-trial motion under
Temporary Rule 13;

(2) Which was raised
or addressed at trial; or

(3) Which could have
been but was not raised
at trial, unless the
ground for relief arises
under rule 20.1(b)
[jurisdiction]; or

(4) Which was raised
or addressed on appeal
or in any previous
collateral proceeding; or

(5) Which could have
been but was not raised
on appeal, unless the
ground for relief arises
under Rule 20.1(b)
[jurisdiction].

STATEMENT OF THE CASE

A. PRIOR COURT PROCEEDINGS

Petitioner Michael Eugene Thompson kidnapped, robbed and murdered Maisie Carlene Gray on December 10, 1984. The Blount County, Alabama, Grand Jury returned a three count indictment against Thompson for that kidnapping/robbery/murder on January 18, 1985. (C.TR. 19-20)² Counts One and Three of the indictment charged Thompson with the Ala. Code §13A-5-40(a)(1)(1975) capital offense of "[m]urder by the defendant during a kidnapping in the first degree or an attempt thereof committed by the defendant." (C.TR. 19-20) Count Two of

²"C.TR." refers to pages in the clerks record from Thompson's 1985 trial, which is contained in volume I of the transcript from the 1985 trial and which is a part of the record on appeal in this case.

the indictment charged Thompson with the Ala. Code §13A-5-40(a)(2) (1975) capital offense of "[m]urder by the defendant during a robbery in the first degree or an attempt thereof committed by the defendant." (C.TR. 19-20)

The case was tried before a jury on May 6-10, 1985. (TR. 8-844)³ The jury found Thompson guilty of murder during a kidnapping in the first degree (TR. 843) and unanimously recommended a sentence of death (TR. 886-888) on May 10, 1985. After a separate hearing on June 11, 1985, the trial judge sentenced Thompson to death. (TR. 889-937)

On direct appeal, the Alabama Court of Criminal Appeals affirmed Thompson's conviction and death sentence. Thompson

³"TR." refers to page numbers in the 1985 trial transcript, which is a part of the record on appeal in this case.

v. State, 503 So.2d 871 (Ala.Cr.App. 1986). Rehearing was overruled by that court on May 13, 1986. On certiorari in the Alabama Supreme Court, the Alabama Court of Criminal Appeals was affirmed. Ex parte Thompson, 503 So.2d 887 (Ala. 1987). This Court denied Thompson's Petition For Writ of Certiorari.

Thompson v. Alabama, 484 U.S. 872 (1987).

Thompson filed a pro se Petition for Relief From Conviction or Sentence pursuant to Temporary Rule 20, Alabama Rules of Criminal Procedure, in the Blount County Circuit Court on January 5, 1988. (CR. 7-8)³ After obtaining a lawyer, Thompson filed an Amended Petition For Relief From Conviction or

⁴"CR." refers to page numbers in the clerk's record from the Rule 20 collateral proceeding, which is contained in volumes 3 and 4 of the transcript of that proceeding and which is a part of the record on appeal in this case.

Sentence pursuant to Temporary Rule 20, Alabama Rules Criminal Procedure, on April 11, 1988. (CR. 17-40) The State filed its Answer to the petition on May 10, 1988. (CR. 41-47) On May 10, 1989, Thompson filed a second amended petition (CR. 80-164), which was answered by the State on May 19, 1989 (CR. 175-200).

On May 23-25, 1989, the state Rule 20 trial court held an evidentiary hearing on Thompson's claims of ineffective assistance of counsel and newly discovered evidence contained in Thompson's Rule 20 petition. (R. 1-517)⁵ The state Rule 20 trial court entered its Opinion and Order denying Thompson relief on February 15, 1990. (CR. 237-298)

⁵"R." refers to page numbers in the Rule 20 evidentiary hearing transcript, which is a part of the record on appeal in this case.

The Alabama Court of Criminal Appeals affirmed the denial of relief on January 18, 1991. Thompson v. State, 581 So.2d 1216 (Ala.Cr.App. 1991). On March 1, 1991, the Alabama Court of Criminal Appeals overruled Thompson's application for rehearing. The Alabama Supreme Court denied Thompson's petition for writ of certiorari to the Alabama Court of Criminal Appeals without opinion on June 21, 1991. Thompson v. State, 581 So.2d 1216 (Ala. 1991).

Thompson filed his brief in this Court on October 15, 1991.

B. STATEMENT OF THE FACTS⁶

In his Rule 20 petition for relief from conviction or sentence, as amended,

⁶The facts supporting Thompson's conviction and death sentence are summarized in the Alabama Court of Criminal Appeals' opinion in the direct appeal of this case. Thompson v. State, 503 So.2d 871, 874-875, 884 (Ala.Cr.App. 1986).

filed in the Blount County, Alabama, Circuit Court, Thompson raised eighteen issues. (CR. 17-40, 80-164) The State of Alabama filed an Answer to the petition, as amended, asserting procedural bar defenses to fifteen of those eighteen claims and denying the three remaining claims. (CR. 41-47, 175-200) After conducting an evidentiary hearing on Thompson's claims, the Blount County Circuit Court (the Rule 20 trial court hereafter) entered an Opinion and Order denying Thompson relief on all of his claims. (CR. 237-298) That Court found that fifteen of Thompson's claims were procedurally barred from review under Temporary Rule 20.2(a), Alabama Rules of Criminal Procedure, including his claim raised in this Court that his confession was not admissible because it was not voluntarily given and it was

taken in violation of Thompson's assertion of his Miranda rights. (CR. 237, 238)

In his Rule 20 petition, Thompson raised twenty-four claims of ineffective assistance of counsel. The Rule 20 trial court found all of those claims to be without merit. (CR. 253-297) The statement of the facts presented by Thompson in his certiorari petition to this Court is inaccurate, incomplete and completely ignores the facts as presented at the Rule 20 hearing and as found by the Rule 20 trial court.

Contrary to the picture painted by Thompson in his certiorari petition, Thompson was represented at trial and on the direct appeal of his case by experienced and competent counsel. The Rule 20 trial court made the following findings of fact which are fully supported by the evidence presented at

the Rule 20 evidentiary hearing and which accurately reflect the representation that Thompson, in fact, received:

Prior to the trial of this case, Thompson's attorneys met with him for more than 20 hours. During some weeks they met with him daily, especially close to trial. Thompson's attorneys also undertook a great deal of investigation and research into the legal issues in this case. Based on conversations with Thompson, the fact that Thompson had confessed, and on the results of the psychiatric examinations, Thompson's trial counsel developed a trial strategy that involved a theory of lesser culpability and putting the State to its burden of proof.

...

Prior to trial, McPherson and Dobson [trial counsel] met with Thompson extensively. In those meetings with Thompson, his trial attorneys discussed trial strategy and his defense with him. Trial procedures were also discussed with Thompson. State's Exhibit 1, which is a transcript of a conversation between Thompson and his attorneys prior to Thompson's trial, which was taped by trial counsel, reveals

that defense decisions were discussed with Thompson. For example, trial counsel discussed with Thompson whether he wanted his statement of the events surrounding the crime, as given to his attorneys, turned over to the sheriff's office. It also reveals that trial counsel explained to Thompson the possible consequences of turning over that statement, which incriminated Shirley Franklin.

The transcript reveals that Thompson's version of the events on the night of the crime were discussed with him in detail; a description given by a witness who was on the scene prior to the victim being reported missing was discussed with him; and, the various motions to be filed were discussed with him. State's Exhibit 1 also reveals that a possible insanity or diminished capacity defense was discussed with Thompson and the procedures required to establish such a defense were explained and discussed with Thompson.

In addition, McPherson and Dobson testified that they met and discussed the trial and Thompson's defense during trial, each morning before trial began, and each evening after proceedings were adjourned. This Court finds

that the testimony of John Dobson and B.J. McPherson that they communicated with Thompson regarding his defense and trial procedures is credible, and that Thompson's testimony to the contrary is not credible. The evidence reveals that trial counsel were very conscientious in their communication with Thompson and in advising him of trial procedures. Thompson has failed to establish that his trial counsel's performance was deficient in their communication with Thompson.

Thompson has also failed to establish that he was prejudiced by any failure of his trial counsel to communicate with him. Thompson presented no evidence that his trial counsel failed to communicate anything to him that would have made a difference in the outcome of his trial. ...

Thompson also has not shown that his trial counsel failed to competently advise him or gave him erroneous advice as to the charges pending against him; the defense strategy; the effect of having Thompson testify during the guilt phase of the trial; the effect of not having Thompson testify before the jury during the penalty phase of the trial; the effect of not having Thompson's mother testify before the judge

immediately prior to sentencing; or the effect of failing to adequately prepare for the penalty phase of the trial.

Thompson presented no evidence that his trial counsel failed to advise, or erroneously advised, Thompson that he was charged with the capital murder of Maisie Carlene Gray, and of the possible consequences of that charge. ...

Trial counsel thoroughly advised and discussed defense strategy with Thompson, including a possible insanity defense as is reflected in State's Exhibit 1. The trial attorneys also explained the difficulty in defending the version of the crime he gave them, considering the fact that he had given a different version in his confessions. ...

Trial counsel were also very diligent in explaining to Thompson the effect of his testifying during the guilt phase of the trial. Again, this is reflected in State's Exhibit 1. Trial counsel explained the problems and possible consequences of Thompson telling a different story in court than he told in his confession. After explaining to Thompson that he had the right to testify or not

to testify, trial counsel advised Thompson to take the stand and testify at the guilt stage of the trial. This advice was reasonable in light of Thompson's wanting the jury to disregard his confession to law enforcement officers; believe that he gave them that story in order to protect his girlfriend, Shirley Franklin; and that it really was Shirley Franklin who actually shot and killed Mrs. Gray. ...

This Court finds that trial counsel did advise Thompson as to the importance of his testifying before the jury during the penalty phase of the trial and the possible effects of his not testifying. Trial counsel advised Thompson to testify at the penalty phase but he refused, telling his trial counsel he "wasn't going to get on the stand and beg those bastards for anything." The trial record also reflects that Thompson was advised of his right to testify and that he did not want to. Thompson's assertions to the contrary are not credible. ...

Thompson presented no evidence on his claim that his trial counsel failed to competently advise him or gave him erroneous advice regarding the effect of not having his mother testify before this Court immediately prior to

sentencing. There is no evidence therefore that his counsel's performance was deficient as to this claim. Furthermore, there was no prejudice from the failure of the mother to testify immediately prior to sentencing. This Court is the same court that heard evidence at both the guilt and penalty stages in the 1985 trial of this case. Thompson's mother, Joyce Parker, testified at the penalty phase of this case as to Thompson's drug and alcohol problems and asked the jury for mercy. This Court heard that testimony and had Mrs. Parker also testified after the jury's recommendation and prior to sentencing before this Court, the sentence imposed would have been the same. Therefore, there is no prejudice from any failure on trial counsel's part to advise Thompson of the effects of his mother taking the stand immediately prior to sentencing.

Thompson presented no evidence that his trial counsel failed to advise, or erroneously advised, Thompson of the effect of failing to adequately prepare for the penalty phase of the trial. He has therefore not shown his trial counsel's performance was deficient. Further, trial counsel did in fact adequately

prepare for the penalty phase,
see pp. 43-48, below.

...

In paragraph 19(a) Thompson alleges that trial counsel did not adequately investigate his case. This allegation is contradicted by the evidence submitted at the Rule 20 hearing.

Upon being appointed to represent Thompson in this case, trial counsel learned that Thompson had given a confession implicating himself as the sole perpetrator of this crime. Subsequent to that, trial counsel were told two or three different stories by Thompson as to what occurred on the night Maisie Gray was kidnapped, robbed, and murdered. However, he always maintained that he was involved in the robbery and kidnapping, although he told his attorneys he did not murder Maisie Gray.

Trial counsel repeatedly stressed to Thompson the importance of telling them the truth about what occurred on the night Maisie Gray was murdered. State's Exhibit 1 clearly establishes this fact. Thompson maintained that he did rob and kidnap Maisie Gray, but that Shirley Franklin actually murdered Maisie Gray. It was on this basis that trial

counsel conducted their investigation and developed their strategy.

Trial counsel testified, and this Court finds that testimony credible, that in preparing for this case, trial counsel interviewed law enforcement personnel involved in the investigation of this case; members of Thompson's family; Thompson himself; and, every person that Thompson named as being a possible witness for him in this case. Trial counsel testified, and Defendant's Exhibit 20 and 21 reflect, that they visited the scene of the crime and searched for witnesses in the community. Trial counsel did not find anyone in the community to testify on Thompson's behalf, except for two of his friends, Jackie Pope and Connie Pope, and his mother, Joyce Parker.

Trial counsel spoke with Thompson's mother about Thompson's childhood and any traumas he may have experienced. The contrary testimony of Thompson's mother, Joyce Parker, is not credible because, based on her testimony and demeanor, she was biased and not a credible witness. In their many hours of discussion with Thompson, trial counsel also asked Thompson about his childhood, educational

background, drug and alcohol problem, and religious background. Thompson's testimony to the contrary is not credible.

In addition, trial counsel filed many pretrial motions, including a motion to produce. Their motion to produce was granted and they reviewed material in the District Attorney's file. The trial attorneys also researched the legal and factual issues they anticipated would arise before and during trial.

Trial counsel filed the motions for psychiatric examination because this was a capital case and because they felt it would help them establish a diminished capacity defense. Trial counsel's motion for psychiatric examination and motion for independent psychiatric examination were both granted and Thompson was evaluated at Taylor Hardin Secure Medical Facility by a lunacy commission and by a private psychiatrist hired by trial counsel, Dr. R.A. Sleszynski.

In general, trial counsel's performance in investigating Thompson's case was thorough and Thompson has not demonstrated that trial counsel's performance was "outside the wide range of

professionally competent assistance." 466 U.S., at 690. He has not shown his trial counsel's performance was deficient with respect to his two specific allegations of inadequate investigation either.

In paragraph 19(b), Thompson claims that his trial counsel were ineffective because they failed to contact an eyewitness to the robbery of the victim. Thompson failed to name who the eyewitness to the robbery of Maisie Gray was and presented no testimony that there was in fact an eyewitness to the robbery of Maisie Gray. However, it appears from the testimony at the evidentiary hearing that Thompson is claiming that his trial counsel were ineffective for failing to contact a witness named Jack Lee Roberts.

Roberts is the same individual who is the basis of Thompson's Brady claim discussed on pp. 9-12, above. Trial counsel testified at the evidentiary hearing that they were aware that Roberts had given a description of an individual that he saw in the Majik Market shortly before Maisie Gray was discovered missing which description arguably did not fit the description of Thompson. However, based on their conversations with Thompson,

trial counsel did not investigate this information further. Thompson had consistently maintained that he committed the robbery and kidnapping of Maisie Gray and it was reasonable for trial counsel not to contact Roberts in light of that fact. Trial counsel's reliance on what Thompson told them in guiding their investigation was reasonable. As was noted in Strickland v. Washington, 466 U.S. at 690, the reasonableness of a counsel's actions may be determined or substantially influenced by what the defendant has told him.

Further, Thompson cannot establish prejudice with respect to this specific allegation of inadequate investigation. Roberts did not reveal to the police that he actually saw the robbery, kidnapping or murder of Maisie Gray. There is no evidence that, had this information been more thoroughly investigated, any more information would have been discovered. Thompson has failed to demonstrate that, but for counsel's performance in not contacting Roberts, the outcome of the trial would have been different.

In paragraph 19(f), Thompson claims trial counsel failed to investigate critical state witnesses. In his amended

petition, Thompson does not name what "critical state witnesses" were not adequately investigated. At the evidentiary hearing, the only critical state witness referred to by Thompson was Shirley Franklin. This Court finds that an adequate investigation was made of Shirley Franklin.

Prior to the trial of this case, trial counsel received a tape recorded statement by Shirley Franklin given to the Etowah County authorities during the investigation of this case. In the transcript of that statement, Defendant's Exhibit 12, Shirley Franklin implicated Thompson as the perpetrator of the robbery/kidnapping/murder of Maisie Gray. Trial counsel were told by Thompson that Shirley Franklin had a prior felony conviction and trial counsel continually, but unsuccessfully, tried to obtain some confirmation of that fact. They finally had Shirley Franklin brought in and questioned and she admitted in a tape recorded interview that she had a prior armed robbery conviction and several escapes.

The Saturday before trial, Dobson received a NCIC report indicating that Shirley Franklin had a criminal record and, on the morning trial

began, asked this Court to continue the case which it refused to do. Trial counsel also objected to Shirley Franklin's testimony during the trial of this case because they had not been provided information on her prior criminal record.

Trial counsel also investigated Shirley Franklin's community reputation. They in fact discovered one witness who agreed to testify that Shirley Franklin had held a gun to his head while robbing him. That witness later refused to testify, however.

Trial counsel's investigation of the State's witness Shirley Franklin was not outside the wide range of professionally competent assistance. It was in fact a thorough, complete investigation. Trial counsel did everything they could to obtain impeachment evidence on Shirley Franklin. That they were unsuccessful does not mean their performance was deficient.

...

In paragraphs 19(g), (t) and (x) of his amended petition in that part of the petition labeled "Grounds Of Petition", Thompson alleges that his trial counsel were ineffective because they failed to

adequately prepare, investigate, pursue, and present a defense strategy at the guilt phase of his trial. This allegation is without merit.

...

As was discussed on pp. 19-24, above, trial counsel developed their trial strategy based on the fact that Thompson continually maintained that he robbed and kidnapped Maisie Gray but that Shirley Franklin actually shot and killed Maisie Gray. Trial counsel's strategy at the guilt stage was to present evidence of Thompson's limited participation in the crime, to implicate Shirley Franklin as the murderer; and to present evidence of Thompson's diminished capacity due to his alcohol and drug use to negate the necessary intent. Trial counsel considered a possible insanity defense but based on their contact with Thompson and the report from Taylor Hardin Secure Medical Facility and the report from Dr. Sleszynski, a private psychiatrist hired by trial counsel, they rejected this defense. Trial counsel also attempted to have Thompson's statements to law enforcement authorities suppressed. Trial counsel's defense strategy was a reasonable strategy based on the facts presented to them.

Thompson has not shown that trial counsel's defense strategy at the guilt stage was deficient. In fact, it was a sound, reasoned strategy. Trial counsel made the type of sound strategic decision after reasonable investigation that the Supreme Court has found to be "virtually unchallengeable." Strickland, 466 U.S. at 690. Thompson also has not demonstrated prejudice as this Court finds that the evidence presented in this case established Thompson's guilt beyond a reasonable doubt.

Thompson claims in paragraphs 19(g) that trial counsel were specifically ineffective in their defense strategy because they failed to prepare Thompson to testify. This Court finds as a fact that trial counsel adequately discussed and prepared Thompson for trial and advised him of the defense strategy to be followed in his case. Trial counsel even went over the specific questions Thompson would be asked by them at trial. Therefore, trial counsel's performance was not deficient as to this specific claim. ...

Thompson claims in paragraphs 19(t) that trial counsel was ineffective because it was admitted in opening statement that Thompson had

kidnapped and robbed Maisie Gray and was present during her murder. Thompson presented testimony from Richard Jaffe regarding this specific allegation. It was Jaffe's opinion that trial counsel was ineffective for conceding guilt in opening statements. This Court rejects that opinion and finds that it was a reasonable strategic decision to admit Thompson's limited guilt in opening statements in order to diminish the impact of the evidence presented during the trial, especially in light of trial counsel's defense strategy to admit limited participation and argue that Thompson was less culpable than Shirley Franklin.

...

In paragraph 19(g) of the amended petition in the part of the petition labeled "Grounds Of Petition", Thompson alleges that his trial counsel were ineffective because they failed to seek to have the victim's body examined for blood or semen specimens which could have exculpated Thompson. Thompson presented no evidence in support of this claim at the evidentiary hearing and this allegation is without merit.

The victim's nude body was found submerged in water in an old well after over 20 days of

exposure to the elements. Trial counsel had obtained copies of the autopsy report on the victim. Thompson's trial counsel did not seek examination of the victim's body due to the fact that they felt that little information could be obtained from the victim because of this exposure. Based on the information they had, they did not think it was necessary to have the body examined for blood and semen specimens.

Trial counsel also had a strategic reason for not seeking to have the victim's body examined for blood or semen specimens. According to what Thompson told his trial counsel, the only male present at the well at the time Maisie Gray was pushed into it was Thompson. Trial counsel felt that an examination of the body for semen specimens may have revealed that Thompson raped the victim, as well as having kidnapped and robbed her. Trial counsel made a reasonable strategic decision to forego having the victim's body examined for blood and semen specimens. Further, Thompson has again failed to establish any prejudice from the failure of trial counsel to have the victim's body examined and this claim must fail.

...

In paragraphs 19(k) and (n) of his amended petition, in that part of the petition labeled "Grounds Of Petition," Thompson alleges his trial counsel were ineffective because they failed to prepare, investigate, and present a penalty phase defense strategy and effectively make a case for saving Thompson's life and this allegation is without merit.

...

Trial counsel knew before trial that there was a guilt phase and a penalty phase to a capital murder trial and they prepared for both phases prior to trial. The defenses to both phases were similar. As at the guilt phase, trial counsel presented evidence of Thompson's diminished capacity at the penalty phase through the testimony of his mother regarding his drug and alcohol abuse. Trial counsel also presented testimony regarding the effects of Thompson's father's death on him, in an attempt to garner sympathy for Thompson.

In addition, trial counsel spoke with family members, friends, people in the community, and anyone Thompson told them to talk to in an attempt to discover any possible mitigation. This investigation was

unsuccessful. They also questioned Thompson about his religious affiliation and he denied any. Finally, trial counsel also made a motion for psychiatric examination and motion for independent psychiatric examination both of which motions were granted by this Court. Trial counsel considered these reports and spoke with Dr. Sleszynski, the private psychiatrist hired by them. Based on the reports and their discussions with Dr. Sleszynski, they made a strategic decision, as is discussed more fully on pp. 52-56, below.

Thompson has failed to demonstrate that trial counsel's performance was deficient. They investigated possible mitigating circumstances prior to trial, and based on what they found from this investigation, developed their penalty phase defense strategy. Because of the problems in discovering any witnesses who would come forward to testify on Thompson's behalf, and because Thompson adamantly refused to testify before the jury at the sentence phase, trial counsel presented the only witness in mitigation that they had, Joyce Parker, Thompson's mother. This was not deficient performance by trial counsel.

Thompson has also failed to establish prejudice. At the evidentiary hearing, Thompson presented several witnesses to demonstrate that trial counsel's investigation was inadequate and as a result his case was prejudiced. Thompson took the stand and testified about his drug and alcohol problems; about his traumatic upbringing in a violent household; about his religious experiences; about head injuries he received as a child; about the effects of his father's death on him; and about other traumatic experiences growing up. Thompson testified that he did not tell his trial counsel about these experiences because they did not ask him about it. He also testified that he was not given the opportunity to testify at the penalty phase of his trial. This last contention of Thompson's is directly contradicted by Thompson's testimony at his 1985 trial. (TR. 847-49) It is also contradicted by trial counsels' testimony at the evidentiary hearing. This Court finds that trial counsel asked Thompson about his background in an attempt to discover evidence to present in mitigation and he failed to reveal to them the information regarding his background that he testified to at the evidentiary hearing. The Court

finds that the absence of this evidence at trial is attributable to Thompson's refusal to testify and not any deficiency in his counsels' performance.

...

Further, this Court finds that had this Court or the jury heard the testimony of Laura Thompson, Alfred Lett, and Jerry Fleming at trial, there is no reasonable probability that the outcome of the trial would have been different. Laura Thompson's testimony was not helpful to Thompson's claims to have extensively abused drugs and alcohol in that she entrusted her infant child to his care, including riding in a car driven by him. Alfred Lett's testimony was not helpful to Thompson's claim to have used drugs and alcohol extensively in that he described Thompson as a good worker and further had only limited contact with Thompson. Reverend Fleming had no contact with Thompson for many months preceding the crime. Additionally, all of these witnesses displayed a strong bias toward Thompson which undercuts their credibility. This testimony is far from compelling and does not create a reasonable probability that, had it been presented, Thompson would not have been sentenced to death.

Joyce Parker's testimony also does not establish prejudice. Parker testified that she was never contacted prior to trial about testifying on behalf of her son. This testimony was contradicted by trial counsel. It is also reflected in Dobson's fee sheet, Defendant's Exhibit 20, that he spoke with Thompson's mother prior to trial. This Court finds that trial counsel's testimony was credible and that Parker's was not. This Court also finds Parker's Rule 20 testimony was merely cumulative with respect to Thompson's drug and alcohol abuse and the affects on Thompson of his father's murder. Parker testified before the jury at trial as to that mitigation.

...

In paragraph 19(h), (s), and (w)(ii) of his amended petition in that part of the petition labeled "Grounds Of Petition," Thompson alleges that his trial counsel were ineffective because they failed to adequately investigate Thompson's emotional and mental health problems and limitations; because they failed to seek a prompt hearing on Thompson's motion for independent psychiatric examination; because they failed to procure an expert to

testify at the sentence phase of the trial; and, because they failed to object to the denial of Thompson's motion for a continuance so that Thompson could obtain an independent psychiatric examination. This allegation is without merit.

As was discussed on pp. 24-29, above, trial counsel conducted an extensive investigation of Thompson's background in an attempt to discover any possible mitigation. In addition, they asked for and received both a lunacy evaluation of Thompson at Taylor Hardin Secure Medical Facility and a private psychiatric examination by an examiner of their own choosing, Dr. R.A. Sleszynski, M.D. Based on their investigation and the results of these reports, trial counsel made a strategic decision to present evidence of Thompson's drug and alcohol problems and the effects of his father's death on Thompson through lay testimony. Thompson refused to testify before the jury at sentencing, so his trial counsel relied on Thompson's guilt phase testimony and the testimony of his mother in establishing this mitigating circumstance.

Trial counsel made a strategic decision not to use the information contained in

Dr. Sleszynski's report or to have Sleszynski testify for two reasons. First, they considered that the information in the report was open to rebuttal by the Taylor Hardin report. The Taylor Harin report established that Thompson was criminally responsible for his actions at the time of the crime even though at the time of "the alleged offense, it is possible Mr. Thompson was under the influence of self-administered intoxicants at that time." (CR. 83) Trial counsel felt that evidence from the Lunacy Commission report that Thompson was competent and that his self-administered intoxicants did not diminish his criminal responsibility could have been harmful to Thompson.

The second reason trial counsel did not use Sleszynski's report is because, after discussing the report with Sleszynski, trial counsel felt that Sleszynski was not sympathetic to their client and his attitude on the witness stand would be detrimental to their client. Trial counsel feared that, due to his lack of sympathy, Sleszynski could have harmed their client on cross-examination by the prosecution.

Trial counsel's strategic reasons for not using the

Sleszynski report were within the "wide range of reasonable professional assistance," and Thompson has not demonstrated any prejudice from failure to use the report or from failure to investigate his drug and alcohol problems further.

Thompson presented two experts with respect to this issue: Richard Jaffe, a criminal defense attorney and Dr. Bill Beidleman, a clinical psychologist. ...

Beidelman was and is a clinical psychologist licensed to practice in Alabama. Beidelman was hired by Thompson's present counsel to interview him. Based on this interview of Thompson; his psychological testing of Thompson; his review of records in this case; and discussion with Thompson's mother, it was Beidelman's testimony that Thompson was suffering from alcoholism; poly-substance abuse; and anti-social personality disorder in remission. Beidelman testified that this diagnosis was accurate as to the time of the crime, as well. These were the same diagnoses given by Sleszynski and one of the members of the Lunacy Commission that evaluated Thompson. Thompson's trial attorneys had this information and Thompson has not shown that

any failure to further investigate this issue prejudiced this case.

Thompson took the stand at the evidentiary hearing and testified about many things in his background including his alcohol and drug problems; his violent upbringing; traumatic experiences in his life; and head injuries he received as a child. Thompson discussed these problems with Beidelman and Beidelman still had the same diagnoses that prior examiners of Thompson had. Therefore, Thompson has not shown any prejudice from his trial counsel's failure to discover this information so that they could present it to an expert to examine.

...

In paragraph 19(y)(i)-(vi) of his amended petition in that part of the petition labeled "Grounds Of Petition", Thompson alleges his appellate counsel, John Dobson and B.J. McPherson, were ineffective because they failed to adequately prepare Thompson's appeal and because they failed to raise certain issues on appeal. Thompson's appellate counsel's performance in preparing and effectuating his appeal was not deficient.

Dobson testified that prior to preparing the appellate

brief in this case, he reviewed the entire record and wrote down all the adverse rulings made by this Court. He then researched all possible claims and decided based on that research to raise those claims he thought were likely to succeed. Dobson testified that he didn't raise several of the issues Thompson now claims he should have raised based on the law and his likelihood of success of the merits. In particular, he testified that he did not raise the venue issue; and the improper closing argument issue because based on his research, those issues would not have been successful on the merits. This Court finds that trial counsel ably researched and prepared Thompson's appeal in this case.

...

... The fact that Dobson and McPherson focused on issues other than those Thompson's current counsel has selected does not remove their representation of Thompson from the wide range of professionally competent assistance.

(CR. 254-297) As is illustrated in the above-cited facts, trial counsels' performance was not hindered by the

statutory fee cap on reimbursement for indigent representation. Although McPherson did testify that he and Dobson did not hire a private investigator because funds to pay that investigator would have had to have come out of his own pocket, McPherson and Dobson did their own, thorough investigations.

Furthermore, as to the confession issue, the evidence presented at the Rule 20 evidentiary hearing demonstrates that Thompson's confession was given knowingly, voluntarily and intelligently after he waived his constitutional rights. The only evidence that Thompson asserted his right to remain silent and right to counsel was Thompson's testimony and Thompson was found to be not credible.

ARGUMENT

I.

CERTIORARI SHOULD NOT BE GRANTED ON THOMPSON'S CLAIM THAT THE LIMITATIONS PLACED ON THE AMOUNT OF COMPENSATION THAT COUNSEL REPRESENTING INDIGENT CAPITAL MURDER DEFENDANTS CAN RECEIVE FROM THE STATE IN ALABAMA ARE UNCONSTITUTIONAL BECAUSE THEY RESULT IN THE INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner Michael Eugene Thompson claims that the limitations placed on the amount of compensation that counsel representing indigent capital murder defendants can receive from the state in Alabama are unconstitutional because they result in the ineffective assistance of counsel. There are three reasons why certiorari should not be granted to consider that issue.

A. This Court Should Deny
Certiorari Because It Lacks
Jurisdiction To Address The
Claim Because It Was Not
Properly Raised In Or
Decided By The Courts Below

This Court should not grant certiorari to review Thompson's claim that the limitations placed on the amount of compensation that counsel representing indigent capital murder defendants can receive from the state in Alabama are unconstitutional because this Court lacks jurisdiction to address the issue because it was not properly raised in or decided by the Alabama courts, below.

Thompson did not raise his claim regarding Alabama's indigent compensation statutes in the trial court, on direct appeal, or in his Rule 20 proceedings in the Rule 20 trial court. Thompson arguably raised his claim for the first time in the appeal from the denial of Rule 20 relief in the Alabama Court of

Criminal Appeals. That issue was not properly raised in the Alabama Court of Criminal Appeals because, under Alabama law, issues raised for the first time in an appeal from the denial of collateral relief are procedurally barred from being raised. See, e.g., Bell v. State, 518 So.2d 840 (Ala.Cr.App. 1987), cert. denied, 518 So.2d 840 (Ala.), cert. denied, 486 U.S. 1036 (1988); Jackson v. State, 501 So.2d 542, 544-545, 547 (Ala.Cr.App. 1986); Morrison v. State, 551 So.2d 435, 437 (Ala.Cr.App.), cert. denied, 551 So.2d 435 (Ala. 1989). There is no indication in the Alabama Court of Criminal Appeals' opinion that it considered Thompson's procedurally barred issue. Thompson v. State, 581 So.2d 1216 (Ala.Cr.App.), cert. denied, 581 So.2d 1216 (Ala. 1991).

This Court has repeatedly held that it will not consider issues not properly presented to and considered by the state courts. See, e.g., Street v. New York, 394 U.S. 576, 581-582 (1969); Bailey v. Anderson, 326 U.S. 203, 206-207 (1945); Nelson v. County of Los Angeles, 362 U.S. 1, 9 (1960); McGoldrick v. Compaigne Generale Transatlantique, 309 U.S. 430, 434-435 (1940); S.R.A. v. Minnesota, 327 U.S. 570 (1946) (Stone, J., concurring). "Moreover, this Court has stated that when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, ... See, e.g., Bailey v. Anderson, supra; Chicago, R. & L.R. Co. v. McGuire, 196 U.S. 128, 131-133, 49 L.Ed. 413, 415, 417, 25 S.Ct. 200 (1905)." Street v. New York, 394 U.S. at 581-582. Because

Thompson failed to properly raise his claim in the state courts, below, and because the state courts did not address his claim as a result of improper presentation, this Court has no jurisdiction to consider the claim and certiorari should not, therefore, be granted.

B. This Court Should Deny
Certiorari Because The
Claim Is Not Clearly
Presented In This Case

In his certiorari petition, Thompson contends that the limitations placed on the amount of compensation that counsel representing indigent capital murder defendants can receive from the State in Alabama are unconstitutional because they result in the ineffective assistance of counsel. An essential premise of that argument, that Thompson received ineffective assistance as a result of the

compensation limitations, is not clearly presented by the record in this case. Instead, the record indicates to the contrary. A review of the facts as found by the Rule 20 trial court, which are presumptively correct, clearly and unequivocally demonstrate that Thompson received the effective assistance of counsel and that the compensation limitations contained in Ala.Code §15-12-21 and 15-12-22 (1975) in no way interfered with counsels' representation. Therefore, the issue of whether Alabama's compensation limitations result in the ineffective assistance of counsel is not clearly presented in this case and this Court should not grant certiorari to consider that issue.

C. This Court Should Deny
Certiorari Because The
Claim Lacks Merit

This Court should also deny certiorari on Thompson's claim that the limitations placed on the amount of compensation that counsel representing indigent capital murder defendants can receive from the state in Alabama are unconstitutional because they result in the ineffective assistance of counsel because, as this case demonstrates, the compensation limitations do not result in the ineffective assistance of counsel and Thompson's claim lacks merit.

Ala. Code §15-12-21(d) (1975)
provides:

(d) Counsel appointed in cases described in subsections (a), (b) and (c) above, including such cases tried de novo in circuit court on appeal from a juvenile proceeding, shall be entitled to receive for their services a fee to be approved by the trial court. The amount of such fee shall be

based on the number of hours spent by the attorney in working on such case and shall be computed at the rate of \$40.00 per hour for time expended in court and \$20.00 per hour for time reasonably expended out of court in the preparation of such case. The total fees to any one attorney in any one case, from the time of appointment through the trial of the case, including motions for new trial, shall not, however, exceed \$1000.00, except as follows: In cases where the original case involves a capital offense or a charge which carries a possible sentence of life without parole, the limits shall be \$1000.00 for out-of-court work, plus payment for all in-court work, said work to be billed at the aforementioned rates. Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court. Retrials of a case shall be considered a new case.

Ala. Code §15-12-22(d) (1975) contains similar provisions for indigent defendant appellate work.

As is readily discernable, the only limitation on the amount of compensation in a capital case, such as this, is the \$1,000 limit on out-of-court work. An attorney representing an indigent capital defendant is also entitled to compensation for all of his in-court time and, under the statute, is entitled to all reasonable expenses, if approved ahead of time.

Thompson argues that the compensation limitations are unconstitutional because they deny the capital murder defendant the effective assistance of counsel. As understood by the State, the claim is that the limitations are governmental action which interfere with counsel's ability to conduct a defense and the defendant thereby receives ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 686 (1984).

However, the record in this case does not show that counsel did not perform any act necessary to the preparation of a defense because of the limitations and Thompson's claim must, therefore, fail.

In support of his claim that the compensation limitations result in the ineffective assistance of counsel and did result in the ineffective assistance of counsel in his case, Thompson relies on the statement of trial counsel that he did not hire an investigator to help in this case because funds for that investigator would have had to have come out of his own pocket. First, it is important to note that Thompson's trial counsel did not say that he would have had to have paid for "an investigation" out of his own funds, as Thompson claims on page 30 of his petition. Thompson's trial counsel testified only that he did

not hire a private investigator to aid in the investigation because that investigator would have had to have been paid out of his own funds. (R. 228)

Second, it is important to note that, under the compensation statute, trial counsel could have applied for funds to hire an investigator as a reasonable expense, as many capital defense attorneys do, if they had felt it necessary. Trial courts in Alabama often approve funds to hire investigators in capital cases. And, third, it is important to note that, in spite of the fact that a private investigator was not hired in this case, Thompson's trial attorneys conducted a thorough investigation.

Thompson had lived almost his entire life in and around Blount County, Alabama. Therefore, an investigation

requiring a great deal of time and money was not necessary in this case.

Thompson's trial counsel spoke with "the law enforcement personnel involved in the investigation of this case; members of Thompson's family; Thompson himself; and, every person that Thompson named as being a possible witness for him in this case." (CR. 261) They spoke extensively with Thompson and his mother about Thompson's background, including his childhood, educational background, drug and alcohol problem, and religious background, and investigated that background based on what they were told. (CR. 261) In addition, trial counsel thoroughly investigated for the penalty stage of Thompson's trial and, specifically, attempted to obtain a mental health expert to testify on behalf of Thompson. There is not one thing that

counsel did or did not do because of compensation limitations and Thompson's attempt to portray counsel as inept and inadequate in order to demonstrate that Alabama's indigent compensation system results in inadequate representation must fail.

Finally, it should be noted that most of Thompson's claims of ineffective assistance of counsel, see footnote 12 on pages 33-34 of his petition, in no way require the expenditure of funds or inordinate expenditures of time. Contrary to Thompson's claims, his experienced defense counsels' performance was reasonable and they rendered effective assistance. None of Thompson's ineffective assistance of counsel claims had any merit (CR. 255-297) and Alabama's compensation limitations not only had no effect on trial counsel's representation,

they had no effect on the outcome of Thompson's trial.

Thompson claims that Alabama's compensation limitations result in the per se ineffective assistance of counsel in capital cases. Thompson claims that the Strickland v. Washington, 466 U.S. 668 (1984), standard for evaluating ineffective assistance of counsel claims is not appropriate in addressing claims regarding compensation limitations and that the issue cannot be decided on a case-by-case basis applying Strickland. However, this Court rejected a claim that compensation limitations would cause counsel to be per se ineffective in an analogous situation in Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 630 n. 7 (1989). Furthermore, the cases relied on by Thompson in which other states have held that compensation

limitations can be unconstitutional because they can result in the ineffective assistance of counsel do not support Thompson's claim.

In Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), the Florida Supreme Court acknowledged that statutes limiting compensation to appointed counsel are not per se, or facially, unconstitutional. Id., at 1112. However, that court went on to hold that under "extraordinary and unusual" circumstances, a trial court in Florida could order compensation above the maximum amounts contained in the statute where necessary to insure the effective assistance of counsel. Id., at 1115. The Florida Supreme Court did not hold that the indigent compensation statute was unconstitutional, but held that, in certain cases, it could result in the

deprivation of an indigent defendant's Sixth Amendment right. The Florida courts are, therefore, to look at claims regarding compensation limitations and ineffective assistance of counsel claims on a case-by-case basis. The Florida Supreme Court's decision in White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989), did not alter the case-by-case approach taken in Florida, either. In White, the Florida Supreme Court did hold that a capital murder case was always "extraordinary and unusual" as those terms were used in Makemson and that a trial court could always, therefore, order compensation above the statutory limitations. 537 So.2d at 1380. However, that court did not hold that the failure to grant compensation above the statutory limits results in a Sixth Amendment violation. There is a

distinct and important difference between what the Florida Supreme Court held and what Thompson is asking this Court to hold.

Because the limitations placed on the amount of compensation that counsel can receive for representing indigent capital murder defendants from the state in Alabama do not per se result in the ineffective assistance of counsel, and because these limitations did not result in the ineffective assistance of counsel in this particular case, this Court should not grant certiorari to review Thompson's claim.

II.

CERTIORARI SHOULD NOT BE
GRANTED ON THOMPSON'S CLAIM
THAT THE ADMISSION OF HIS
COERCED CONFESSION WAS
UNCONSTITUTIONAL

Thompson alleges in part II of his petition that his waiver of his right to

counsel and his confession were the result of coercive tactics, that they were, therefore, involuntary, and that the admission of his confession was unconstitutional. Thompson also claims for the first time in his petition for writ of certiorari that the Alabama appellate courts' interpretation of the degree of evidence needed to prove that Thompson's waiver of his right to counsel and his confession were voluntary violated constitutional requirements. There are three reasons why certiorari should not be granted to consider that issue.

- A. This Court Should Deny Certiorari Because It Lacks Jurisdiction To Address The Claim Because It Was Not Properly Raised In Or Decided By The Courts Below

This Court should not grant certiorari to review Thompson's claims

regarding the voluntariness of his confession because this Court lacks jurisdiction to address the issue because it was not properly raised in or decided by the Alabama courts, below.

Thompson raised his claim regarding the voluntariness of his confession at trial and on the direct appeal of his case in the Alabama appellate courts. See Thompson v. State, 503 So.2d 871, 877 (Ala.Cr.App. 1986), aff'd, 503 So.2d 887 (Ala. 1987). The Rule 20 trial court, in accordance with Alabama law, found that Thompson's claim regarding the voluntariness of his confession was procedurally barred from review in his collateral proceeding because the claim was raised and addressed on appeal. (CR. 237) In Alabama, claims which are raised and addressed on direct appeal are barred from further review. See, Alabama Rules of Criminal Procedure Rule 32.2(a)(4);

see also, Richardson v. State, 419 So.2d 289, 291 (Ala.Cr.App.), cert. denied, 419 So.2d 289 (Ala. 1982), cert. denied, 460 U.S. 1017 (1983); Ex parte Clisby, 501 So.2d 483, 484 (Ala. 1986); Waldrop v. State, 523 So.2d 475, 477 (Ala.Cr.App. 1987), cert. denied, 523 So.2d 475 (Ala. 1988), cert. denied, 109 S.Ct. 184 (1988). The Alabama appellate courts affirmed the Rule 20 trial court's holding which was based strictly on state law grounds. Thompson v. State, 581 So.2d 1216, 1220, 1221 (Ala.Cr.App.), cert. denied, 581 So.2d 1216 (Ala. 1991).

This Court has repeatedly held that it will not consider issues not properly presented to and considered by the state courts. See, e.g., Street v. New York, 394 U.S. 576, 581-582 (1969); Bailey v. Anderson, 326 U.S. 203, 206-207 (1945); Nelson v. County of Los Angeles, 362 U.S. 1, 9 (1960); McGoldrick v. Compaigne

Generale Transatlantique, 309 U.S. 430, 434-435 (1940); S.R.A. v. Minnesota, 327 U.S. 570 (1946) (Stone, J., concurring). This Court is without jurisdiction to review a claim which is decided strictly on state law grounds. See 28 U.S.C. §1257(3).

Furthermore, to the extent that Thompson is claiming that the Alabama appellate courts' interpretation of the degree of evidence needed to prove that Thompson's waiver of his right to counsel and his confession were voluntary violated constitutional requirements, that claim is not properly before this Court because it was not raised in any of Thompson's state court proceedings. This Court has repeatedly held that it will not consider questions raised for the first time in a certiorari petition. Street v. New York, 394 U.S. 576, 581-582

(1969); Bailey v. Anderson, 326 U.S. 203, 206-207 (1945).

Because Thompson's claims regarding the voluntariness of his confession were not properly raised in and decided by the state courts below, this court has no jurisdiction to consider them.

B. This Court Should Deny Certiorari Because The Claim Is Not Worthy Of Certiorari Consideration

Thompson is requesting that this Court grant certiorari on his claim regarding the voluntariness of his confession, a claim which involves a simple application of this Court's prior decision in Miranda v. Arizona, 384 U.S. 436 (1966), and its progeny, to the facts of this case. This Court is well aware of the great demands on its time to decide issues of far reaching impact.

The voluntariness of the confession claim raised by Thompson will only apply to his case and is simply of such narrow scope and limited precedential value that it is not worthy of certiorari review.

C. This Court Should Deny
Certiorari Because The
Claim Is Without Merit

In the direct appeal of his case, Thompson raised the issue of the voluntariness of his confession. The Alabama Court of Criminal Appeals correctly held that Thompson's claim was without merit. See, Thompson v. State, 503 So.2d at 877-878. The Alabama appellate courts did consider all the facts surrounding Thompson's confession. It did not merely establish voluntariness on the basis of what occurred during Thompson's interview. It did establish the voluntariness requirement in accordance with the law.

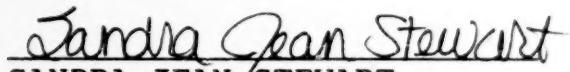
The Alabama Court of Criminal Appeals applied the proper legal standards as established by this Court and correctly held that both Thompson's waiver of his constitutional rights and his confession were voluntary. This Court should deny certiorari on Thompson's claim that his confession was inadmissible because it was coerced because that claim is without merit.

CONCLUSION

For the foregoing reasons, this Court should deny Thompson's petition for writ of certiorari.

Respectfully submitted,

JAMES H. EVANS
ALABAMA ATTORNEY GENERAL


SANDRA JEAN STEWART
ALABAMA ASSISTANT ATTORNEY
GENERAL

CERTIFICATE OF SERVICE

I certify that I have this day served
three copies of the foregoing Brief in
Opposition To Certiorari on the attorneys
for petitioner:

Hon. Stephen T. Waimey
Hon. H. David Henry
Hon. Vincent J. Davitt
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by placing a copy of same to them in the
United States Mail, properly addressed
and with postage prepaid:

Done this 13th day of January, 1992
~~December, 1991~~.

Sandra Jean Stewart
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